ORIGINAL
FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules for	)	RM - 7985
Licensing Fallow 800 MHz	)	
Specialized Mobile Radio	)	
Spectrum Through a Competitive	)	
Bidding Process	)	

To: The Commission

REPLY COMMENTS OF FLEET CALL, INC.

FLEET CALL, INC.

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TABLE OF CONTENTS

SUMMARY

Many speeches, discussions and working groups have already been held, and many words have already been written, concerning Fleet Call's proposal that the Federal Communications Commission (the "Commission") auction to the highest bidder "innovator blocks" of vacant 800 MHz trunked Specialized Mobile Radio ("SMR") frequencies for building advanced digital SMR systems.

Fleet Call's Petition for Rulemaking (the "Petition") is designed to expeditiously bring additional communications capabilities to the public by putting fallow spectrum to use in a seamless, nationwide advanced SMR network. As the American Mobile Telecommunications Association has stated,

> "The movement toward wide-area metropolitan and regional SMR systems which has occurred naturally in urban areas will be slow to develop in secondary and rural markets without regulatory relief along the lines suggested by Fleet Call."

Fleet Call is pleased that the Petition has focused the creative energies and entrepreneurial talents of the SMR industry on ways to facilitate and accelerate the "upgrading" of the SMR service to a modern state-of-the-art mobile communications medium. It has also energized SMRs to find ways to provide additional and improved service offerings in less populated markets.

Comments in this proceeding and elsewhere have accused the Petition of being self-serving; this, of course, is true. It is in Fleet Call's interest, as the pioneer in introducing Enhanced Specialized Mobile Radio ("ESMR") systems, to see this concept and

its derivations replicated in other markets accelerating the development of a digital nationwide SMR service. Alternatives proposed by some commentors to make the innovator block proposal more "palatable" for existing SMRs miss the point. Auctioning innovator blocks of vacant SMR spectrum to the highest bidder is the most effective means to bring competitive new services and service options to mobile communications customers.

Not just one, or even several SMR operators, however, can link the nation in a digital network. The Petition anticipates that SMRs both large and small would successfully bid for the innovator blocks and participate in the SMR "digital revolution." All SMRs would benefit from being able to offer advanced technology and better services. But it is users of mobile radio systems who would benefit the most from the improved, enhanced and customized services, additional capacity, and wide-area communications these developments would produce.

The simple truth is that cellular carriers view enhanced SMRs as competitors. The cellular duopoly, which includes the local exchange carriers that control the "interconnection bottleneck," have asked for authority to provide dispatch and other SMR services as private carriers using cellular frequencies and for common carrier deregulation to eliminate the perceived competitive advantages of private carrier SMRs. In a few short years, Personal Communications Services providers will provide additional competition. In order to thrive in the future, SMRS must undertake today the investments necessary to be competitive with the other

wireless communications networks of the 21st century.

The Petition has "started the ball rolling." Fleet Call is firmly committed to the innovator block concept and is pleased that its Petition has generated additional ideas for improving, refining and expanding upon the particulars of this concept. Fleet Call firmly believes that licensing innovator blocks through competitive bidding is in the public interest. A "reformed" lottery selection process, if possible, will be inferior to and less efficient and effective than auctions. Even if lottery "reforms" reduce speculation, a randomly-selected lottery ticketholder will not possess the compelling business incentives of a successful bidder at auction. Only auctions compensate the citizens of the United States for the right to use scarce public resources. Fleet Call submits that the record in this proceeding provides a sound basis for the Commission to expeditiously issue a Notice of Proposed Rulemaking to create innovator blocks and to simultaneously seek Congressional authorization of innovator block auctions.

Unfortunately, as Fleet Call forecast, speculators have filed hundreds of applications in the proposed innovator block markets which, if granted, would use up all of the vacant channels in many markets. If filed by bona fide applicants committed to constructing advanced systems, the Petition's objectives would be achieved and Fleet Call would support the applications. The evidence suggests, however, that most (but not all) are speculative and violate the Commission's real-party-in-interest and other licensing rules and policies. Fleet Call respectfully encourages

the Commission to protect the integrity of its deliberations in this proceeding, as well as the integrity of its private land mobile radio licensing processes, by taking the actions requested in Fleet Call's Petition to Initiate Inquiry, filed June 30, 1992, and its July 16, 1992 Supplement.

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I. INTRODUCTION

Fleet Call, Inc. ("Fleet Call"), pursuant to Section 1.405 of the Federal Communications Commission's (the "Commission") Rules, hereby respectfully submits its Reply Comments in response to Comments filed on its Petition for Rulemaking (the "Petition") in the above-captioned proceeding.1/

Fleet Call is one of the nation's leaders in developing advanced, highly-efficient digital mobile communications systems. It conceptualized and is constructing Enhanced Specialized Mobile Radio ("ESMR") systems in six of the largest metropolitan areas in the country.2/ These systems incorporate innovative state-of-

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1/ Report No. 1889, released May 11, 1992. Comment and Reply Comment dates were extended to July 17, 1992 and August 3, 1992, respectively, by Order DA-92-711, released June 9, 1992.

2/ On February 13, 1991, the Commission authorized Fleet Call to construct and operate 800 MHz ESMR systems in Chicago, Dallas, Houston, Los Angeles, New York and San Francisco. See In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991) (the "Fleet Call Waiver Order"), recon. den. 6 FCC Rcd 6989 (1991).

the-art technology, including digital speech coding, Time Division Multiple Access ("TDMA") transmission and frequency reuse to yield in excess of 15 times the customer capacity of existing Specialized Mobile Radio ("SMR") systems while providing improved transmission quality and enhanced services. Fleet Call's first Digital Mobile system will be operational in Los Angeles in the summer of 1993.

Thus, Fleet Call has pioneered the introduction of spectrally efficient, advanced digital mobile communications technology for the SMR industry. Fleet Call has committed nearly $350 million to implementing its "leading edge" ESMR systems to provide substantial technological and service enhancements for SMR customers.

Fleet Call is committed to promoting the nationwide availability of advanced digital SMR mobile communications infrastructure and services. On April 22, 1992, Fleet Call filed the subject Petition proposing that the Commission create "Innovator Blocks" of unassigned 800 MHz trunked Specialized Mobile Radio ("SMR") frequencies in 180 Metropolitan Statistical Areas ("MSAs") and use auctions to license them for advanced digital SMR systems.3/ While available to SMR operators and others, the spectrum has lain fallow for over a decade. The adoption of the proposal would provide additional and improved SMR services in smaller markets where the Commission's existing regulations inhibit the development of advanced, competitive, wide-area SMR services. It would accelerate the introduction of advanced SMR technology

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3/ Fleet Call also proposed that innovator blocks be created in the Rural Service Areas ("RSAs") used for cellular licensing purposes. See Petition at p. 8 and n. 14.

throughout the nation, thereby promoting a seamless, nationwide digital SMR service capability.

II. BACKGROUND

Fleet Call's proposal would create numerous opportunities for existing SMRs, as well as new entrants, to bid for innovator block channels thereby participating in the "digital revolution" and an eventual seamless SMR network.4/ It addresses the competitive realities of the wireless communications industry -- particularly the need to attract substantial new investment to "build out" advanced digital SMR systems.

SMRs must expeditiously introduce improved technologies and develop a ubiquitous service capability to meet the public's growing need for wide-area, regional and national private land mobile communications. The 1990s will be the decade of wireless communications networks. The cellular companies, wireline and non-wireline, are moving rapidly to develop nationwide seamless cellular service. The first nationwide mobile data systems are already operating. Other data networks are being developed using cellular spectrum to offer ubiquitous wireless communications capabilities for "laptop" and "palmtop" computers, as well as transaction verification. Paging companies are expanding their

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4/ As discussed below, many of the proposed innovator block markets are located near or between major cities where digital SMR systems are already developing, such as where members of the Digital Mobile Network Roaming Consortium or other SMR licensees plan to build advanced digital SMR networks. Existing SMRs, particularly those in the smaller markets, are in the best position to bid on innovator blocks in or adjacent to their own markets and to fashion regional competitive bidding strategies and regional systems.

nationwide capabilities and mobile satellite services are being developed to "fill in the gaps" in cellular coverage and offer mobile communications to otherwise inaccessible areas.

Thus paging systems, cellular telephone systems, mobile satellite services, SMRs, mobile data networks, and vehicle tracking systems are already competing for many of the same customers and will compete even more aggressively over the next few years.5/ The Commission recently took the first step toward establishing the Personal Communications Services ("PCS") by issuing a Notice of Proposed Rulemaking proposing at least three licensees per market each with up to 40 MHz of spectrum to provide very broadly-defined personal mobile communications services.6/

In light of these realities, the Petition proposes changes in the Commission's SMR regulatory scheme intended to assist SMRs in continuing to do what they have traditionally done so well -- innovate and introduce higher quality, spectrally-efficient communications without requesting additional spectrum allocations from the Commission. These changes would accelerate the development of a seamless, nationwide advanced SMR network by

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5/ Cellular carriers are already seeking authority to provide "specialized mobile" services (i.e., dispatch) on a private carrier basis using their cellular frequencies. The cellular proposal is a direct play for SMR customers and an attempt to "beat out" SMRs in providing them with the services they need for the 1990s and beyond. See Amendment of the Commission's Rules to Authorize Cellular Carriers to Offer Auxiliary and Non-Common Carrier Services, RM-7823, Petition for Rulemaking of Telocator, filed September 4, 1991.

6/ Report No. DC - 2175, released July 16, 1992.

putting into productive use spectrum that has been available to traditional SMR operators for ten years, but has not been utilized.

The Comments filed in this proceeding indicate strong support among much of the SMR industry for regulatory relief designed to accomplish these goals. For example, the American Mobile Telecommunications Association, Inc. ("AMTA"), the association dedicated solely to representing the SMR industry stated:

> "The movement toward wide-area metropolitan and regional SMR systems which has occurred naturally in urban areas will be slow to develop in secondary and rural markets without regulatory relief along the lines suggested by Fleet Call."7/

Fleet Call's Petition is intended to promote these objectives and accelerate their achievement.

The Commission has recognized that its existing rules make development of wide-area, regional and national SMR systems burdensome, time consuming, wasteful, and in some cases, impossible.8/ The current SMR licensing rules were designed in the 1970s to promote the rapid construction of five-channel analog systems and to prevent "warehousing" in a then-newly developing industry. These rules have been effective in promoting innovation and spectrally-efficient systems in the major urban markets. In smaller markets, however, they inhibit the ability of entrepreneurs to obtain large enough amounts of vacant spectrum to attract the

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7/ See Comments of AMTA at p. i.

8/ See e.g., Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, 4 FCC Rcd 8673 (1989).

investment necessary to deploy advanced digital systems. Entrepreneurs must have sufficient spectrum capacity for future growth, and to link their systems with other high capacity advanced SMRs, if they are to risk the investment required to build digital SMR systems.

In designing its proposal, Fleet Call took specific care to protect the ability of existing licensees to expand traditional, analog systems. The proposed innovator blocks would use only a small portion of the total channels available to private land mobile licensees.9/ Non-innovator block channels or, if they were fully assigned, General Category channels in five channel trunked groups, would be available to existing licensees with fully loaded systems

Moreover, the proposal would apply only to the channels designated for the innovator blocks. Licensees on other 800 MHz trunked SMR channels, General Category channels or 900 MHz systems would continue to operate under the current rules. Thus, Commission adoption of the innovator block proposal would not prevent the entrepreneur who wants to build a five-channel analog system from doing so on non-innovator block frequencies.10/

9/ For example, even the optimum 105-channel innovator block would leave almost 75 percent of the total trunked, General Category and non-commercial 800 MHz private land mobile channels available to other licensees and applicants.

10/ In its Comments, the National Association of Business and Educational Radio, Inc. ("NABER") indicates that substantial General Category 800 MHz spectrum is available in many of the proposed innovator block markets. Thus, ample spectrum is available in many markets to accommodate expansion of existing

(continued...)

Competitive bidding licensing procedures were proposed to prevent the flood of speculative applications that have disrupted lottery selection proceedings in the cellular, 900 MHz SMR, 220 MHz, and Low-Power services. Auctions would facilitate more expeditious licensing than costly, cumbersome comparative hearings. As an added benefit, auctioning off the innovator blocks would generate hundreds of million of dollars for the U. S. Treasury -- for the first time compensating the public for the for-profit use of scarce radio spectrum.11/

Thus, the Petition offers rule changes designed to eliminate existing regulatory barriers to introducing advanced SMR technology and services. The SMR industry is dynamic and robust and has been very successful in developing services that meet the needs of private radio customers. The existence of fallow spectrum in many medium and smaller size markets is not the result of industry inefficiency, but of an outmoded regulatory scheme that handicaps the ability of SMR entrepreneurs to build wide-area systems in less densely populated areas and to aggregate sufficient spectrum to support investment in digital systems.12/

10/(...continued)
systems as well as an innovator block licensee. See Comments of NABER, at pp. 12-16.

11/ Based upon a recent Congressional Budget Office Report, auctioning licenses for the proposed 180 MSA market innovator blocks would yield over $250 million for the U.S. Treasury. See "Auctioning Radio Spectrum Licenses -- A CBO Study," The Congress of the United States Congressional Budget Office, March 1992.

12/ Idaho Communications Partners, L.P. ("Idaho") filed an Opposition asserting that Fleet Call "blames" SMR industry
(continued...)

Regrettably, the benefits that would accrue to the public from implementation of the innovator block concept may never be realized. Since Fleet Call filed the Petition, apparent speculators have filed many hundreds of applications for vacant 800 MHz trunked SMR channels in the proposed innovator block markets. Over 400 applications were filed in the first two months by only six applicants prepared by a single preparer and using duplicative sites. It appears that applicants have entered into pre-filing agreements to "get around" various SMR licensing restrictions and failed to disclose material relationships as required by Commission rules. If granted, these many applications would exhaust the vacant channels in many markets thereby undercutting the innovator block proposal before the Commission can consider its merits.

In response, on June 30, 1992, Fleet Call filed a Petition

12/(...continued)
inefficiency for the existence of fallow 800 MHz spectrum. Comments of Idaho at p. 15. Idaho completely misinterprets the Petition. Fleet Call's proposal is offered to correct unwarranted regulatory hurdles in making efficient use of spectrum in medium and smaller markets.

Contrary to Idaho's assertions, the Petition is not intended to prevent Idaho or any other like-minded SMR operator from expanding its service area and introducing more efficient technology five channels at a time. The Petition reflects Fleet Call's experience in raising funds for financing advanced digital SMR infrastructure, and its evaluation of competing mobile communications capabilities, which convince it that SMR growth patterns are inadequate and that the innovator block "jump start" is necessary in certain markets. Moreover, the SMR industry has not always readily embraced advances in technology. Contrary to Idaho's assertions (p. 16) it was the Commission, through its allocation scheme, and not the SMR industry that mandated the introduction of more efficient, but more expensive, trunking technology to the SMR service. Many operators resisted trunked technology and watched their businesses diminish at the hands of more farsighted operators.

asking the Commission to initiate an inquiry pursuant to Section 403 of the Act concerning these applications, reconsider any applications that had already been granted and hold in abeyance all further processing of these applications pending the outcome of the inquiry.13/

Fleet Call renews its request for the actions requested in its Inquiry Petition. The flood of applications supports Fleet Call's belief that the vacant spectrum in the proposed innovator block markets is valuable, particularly now that Fleet Call has shown how it can be linked into a ubiquitous SMR network. The Commission should dismiss those already-filed applications that violate its licensing rules and policies so that bona fide applicants can bid competitively for the authorizations.

III. DISCUSSION

A. Most SMR Commentors Support the Petition's Objectives

Fleet Call is gratified that most of the SMR industry commentors find merit in the Petition. AMTA, the association representing 800 MHz trunked SMR licensees, states that it shares Fleet Call's vision of a seamless, nationwide SMR coverage without inhibiting the reasonable expectations of existing SMR operators.14/ NABER also expressed support endorsing the proposal as an "innovative" idea that should help the private radio industry move into new technology.

13/ Petition to Initiate Inquiry filed June 30, 1992. Fleet Call filed a Supplement to the Petition on July 16, 1992 evidencing apparent continuing abuses.

14/ See Comments of AMTA at pp 7-9.

> "The only means by which 800 MHz spectrum in urban areas can be converted to digital or any other highly efficient technology in a cost effective manner is to be able to offer wide-area service to customers. The implementation of digital systems in the urban area coupled with the expansion of such system over a wide area of coverage should encourage users to convert to the more efficient technology, starting a "snowball" effect of lower consumer cots as more equipment is brought to the marketplace."15/

NABER stated that the Commission should take steps to encourage the conversion of 800 MHz systems to more efficient technology in an expeditious manner.

Dispatch Communications, Inc. ("Discom") expressed strong support for the ability of the proposal to help SMR carriers assemble and finance desirable digital networks. Discom states that creating innovator blocks would make use of numerous 800 MHz channels that have remained fallow for years, help accelerate the desired growth of digital mobile networks, promote competition in the land mobile communications market and help satisfy the public's growing demand for additional capacity and improved services.16/ Discom also noted that it recently joined with four other SMRs to form a digital mobile roaming consortium the goals of which would be greatly advanced by the innovator block proposal.17/ Both

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15/ NABER Comments at p.3-4.

16/ Comments of Dispatch Communications, Inc. at p. 2.

17/ Discom also expresses support for Fleet Call's Petition to Initiate Inquiry urging the Commission to hold the "suspect" applications in abeyance and to dismiss them if inquiry discloses violations of the Commission's private land mobile licensing rules and policies. Discom states that the Commission should not permit (continued...)

Discom and United Mobile Network expressed strong support for innovator block auctions finding them to be vastly superior to other available licensing alternatives.

Another group of commentors, including the Florida SMR Coalition, the American Petroleum Institute ("API"), the Special Industrial Radio Service Association ("SIRSA") , and the Telecommunications Industry Association support many of the concepts included in the Petition while expressing opposition to auctions or certain aspects of the innovator block proposal. All of these commentors favor "modernization" of the 800/900 MHz licensing and operational rules to facilitate the introduction of new advanced technologies.18/ Most of them support deregulation of the Commission's SMR loading standards and the 40-Mile Rule to permit the spectrum consolidation necessary for creating advanced, wide-area SMR systems.

B. Cellular Continues its Obstructive Objections

A few common carriers have used this proceeding to repeat the same anti-competitive arguments made in opposing SMR requests for authority to construct ESMR systems.19/ Centel and McCaw attempt to derail the Petition through their continuing endorsement

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17/(...continued)
insincere speculators to defeat the innovator block petition before it receives a fair hearing. Comments of Discom at p. 3.

18/ See e.g., Comments of API, at pp 7-8.

19/ See Fleet Call Waiver Order, supra. See also Application of Mobile Radio New England for Waiver of the Commission's Rules, filed October 28, 1991; Application of Advanced Radio Communication Services of Florida, Inc., filed July 15, 1991.

of Telocator's Petition to allow cellular carriers to provide dispatch and other SMR services as private carriers on their cellular spectrum. Interestingly, several local exchange carriers, who control the interconnection bottleneck and much of the cellular duopoly market, find it necessary to oppose improved competitive abilities for SMRs while lobbying to exert more control over the mobile communications marketplace.20/

The obvious obstructionist objective of the common carrier commentors is to prevent SMRs from developing a digital, ubiquitous service capability. Cellular licensees want the Commission to limit the ability of SMRs to provide the communications services demanded by today's private radio customers while seeking the ability to themselves function both as private and common carriers and thereby increase their duopoly market power.

The proposed innovator block frequencies are already allocated to the SMR service and available for any SMR to use to provide dispatch, interconnect and enhanced private land mobile communications. The Petition simply proposes rule changes to accelerate and facilitate the ability of SMR entrepreneurs to introduce better technology and higher quality services to more customers. The Petition proposes no change in SMR operations inconsistent with the statutory test of private carriage set forth in Section 332 of the Communications Act of 1934, as amended. The statute states that SMRs are private carriers so long as they do

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20/ See Comments of Southwestern Bell Corporation, Comments of Centel Corporation.

not resell interconnected common carrier telephone services or facilities for a profit. Nothing in the Petition would change the status quo in this regard.

Despite their claims to competitive disadvantage,21/ cellular carriers have exclusive access to more spectrum (25 MHz per cellular licensee -- a 105-channel innovator block is only 5.2 MHz), fewer technical/interference obstacles, marketing and consumer recognition and a roaming/wide-area service headstart of nearly a decade. They have advantageous interconnection arrangements with the telephone system which in many cases they control.22/ SMRs are relieved of state rate and entry regulation, but nearly all of the states welcome competition to cellular and only a few would regulate ESMR services. In fact, only a handful of states now enforce meaningful regulation of cellular telephone systems.

Fleet Call's Petition would remove regulatory burdens that inhibit the ability of SMRs to provide highly efficient, advanced, competitive mobile communications services. Contrary to the claims of the common carrier commentors, the existing mobile

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21/ See e.g., Comments of McCaw Cellular Communications, Inc. at p. 8.

22/ Local exchange carrier ("LEC") abuse of their monopoly access to the public switched telephone network ("PSTN") (in favor of their subsidiary cellular companies) required the Commission to mandate that the LECs offer interconnection to both cellular carriers on a non-discriminatory basis. See In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd 2910 (1987), aff'd., 4 FCC Rcd 2369 (1989). SMR systems are entitled to non-discriminatory interconnection to the PSTN under rates and rate structures comparable to competitive communications systems.

communications regulatory structure promotes healthy competition, facilitates innovation and assures the continued development of services responsive to public need. The innovator block proposal does not necessitate any reexamination of the overall regulatory structure of the mobile communications industry.

Fleet Call supports Centel Corporation's arguments in favor of allowing wireline entry into the SMR industry.23/ Centel states that the prohibition on wireline SMR eligibility is a "relic" of the early days of the SMR industry.24/ It would bar U.S. telephone companies from bidding for innovator block licenses. Centel states that this would permit inexperienced applicants to bid, but exclude experienced providers of exchange telecommunications services. This is not in the public interest and Fleet Call supports Centel's suggestion that the Commission promptly reissue its proposal to allow telephone companies to own SMR systems.25/

23/ The Commission has recently terminated its proposal to eliminate the prohibition on wireline ownership of SMR systems. See Report No. DC-2143, June 24, 1992.

24/ Comments of Centel Corporation, at p. 4, n. 6.

25/ Fleet Call opposes, however, Centel's argument that the Petition be held in abeyance until legislation authorizing auctions is enacted by Congress. The Commission need not and should not defer action on the innovator block and other components of the Petition pending Congressional authorization of innovator block auctions. This suggestion is simply another attempt to delay, defer, and prevent SMRs from implementing improved services. Concurrent with proceeding on its consideration of this Petition, the Commission should be seeking the necessary legislative authority to proceed with auctions.

C. Auctions Offer the Optimum Method to Accelerate the Licensing of Vacant 800 MHz SMR Spectrum for Advanced SMR Systems

The Comments indicate that the most controversial aspect of the Petition is the proposal that the Commission seek Congressional authorization for a competitive bidding "pilot program" for licensing the innovator block channels.

First, certain commentors oppose the auction proposal simply because they have traditionally opposed auctions. Others express concern that if auctions are deemed "successful" in licensing the innovator blocks, they will be adopted in the non-commercial private land mobile service pools, such as the Industrial/Land Transportation or Business Radio Services thereby threatening access for single-user systems. A few commentors simply assert without explanation or economic evidence that auctions would inhibit innovation, or that auctions would allow large companies to dominate the licensing process at the expense of smaller applicants.26/

In every case, these arguments fail to rebut the compelling public interest justification for using auctions to incent the successful applicant to best utilize the spectrum, prevent speculation and most efficiently select licensees for the innovator blocks. Fleet Call is proposing that the Commission obtain limited

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26/ Idaho even asserts that a Congressionally-enacted auction pilot program would be "unconstitutional." Like many of the comments, Idaho's opposition to auctions is generic, not specific to the merits of innovator block auctions.

authority to use auctions for selecting innovator block licensees.27/ Fear that auctions might be used for other services or other licenses is not relevant to the merits of the proposal with regard to innovator blocks.28/

A number of commentors support a "reformed" lottery selection process in lieu of auctions for selecting innovator block licensees. AMTA, for example, suggests that a combination of improved pre-lottery criteria, a substantial filing fee and post-licensing operational requirements could salvage the lottery process.29/ Express Communications, Inc. states that the Commission's recent experience with substantial filing fees and detailed construction requirements for 220 MHz nationwide licenses is "proof positive" that such provisions can reduce speculation and improve the lottery process.30/ It proposes higher filing fees, a detailed engineering plan for the design and construction of the system, a business plan and firm financial commitment, construction deadlines, and restrictions on the transfer of licenses, including

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27/ This is consistent with the draft auction test program recently proposed by the staffs of Senator Inouye and Senator Stevens. See Staff Draft of the Spectrum Competitive Bidding Amendment to S. 218, "The Emerging Telecommunications Technologies Act of 1991."

28/ The National Telephone Cooperative Association (NTCA) expresses concern that small telephone companies should not have to bid in auctions for frequencies to provide basic telephone exchange service in areas best served by radio. Again, this is outside the scope of the proposal and irrelevant to its merits.

29/ Comments of AMTA at p. 19. NABER also suggests a high filing fee.

30/ Comments of Express Communications, Inc. at p. 30.

a substantial transfer fee.

Fleet Call has reviewed these suggestions and remains unconvinced that lotteries can be "reformed" to prevent speculation and improve licensing efficiency. The history of the Commission's attempts to administer lotteries offers strong evidence that any time a valuable franchise is awarded for nothing, it will attract speculators who will create innovative ways to "stack the deck" in hopes of a license award bonanza. Requiring engineering plans, business plans and "firm financial commitments" have already been tried in the cellular lotteries and found wanting. Setting filing fees to deter speculation, rather than recover administrative costs, would itself require enabling legislation, as would imposing transfer fees upon license assignments or transfers of control.31/

More importantly, even if lottery reform were successful in deterring speculation, it cannot produce the positive benefits of selecting licensees through auctions. Successful bidders have much stronger economic incentives to aggressively build and operate "first-rate" communications systems than randomly selected lottery ticket winners. Licensees already operating in a market have strong economic, marketing and strategic incentives to bid for the innovator block in that market as well as adjacent markets thereby creating possible regional systems. Licensees in the major markets will have equally compelling incentives to bid on nearby markets to

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31/ Higher filing fees simply mean that speculators must have "deeper pockets." They do not guarantee that speculation will be prevented.

promote expanded advanced SMR capabilities. Finally, auctions provide a market-based approach to compensating the public for making scarce spectrum resources available to profit-making entrepreneurs.

Although the Commission is to be commended for its efforts to limit speculation for nationwide 220 MHz licenses, the effectiveness of the 220 MHz nationwide filing fee and licensing restrictions in preventing speculation and expediting the delivery of narrowband communications services is subject to debate at this time. The Commission was concerned enough about speculation to propose using comparative hearings to select from among the nationwide applicants.32/ At least one applicant has had to find communications capabilities in other services due to the delays in issuing 220 MHz authorizations.33/ Moreover, while the filing fee and construction requirements may have reduced the number of applicants, a number of the non-commercial nationwide applicants appear to have no need for internal nationwide communications systems. They seem to be speculating in an attempt to eventually sell excess capacity to commercial users.34/

32/ Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, 6 FCC Rcd 898 (1992).

33/ See UPS Commits to Cellular Mobile Data; Says 220 MHz Not Forsaken," Industrial Communications, May 15, 1992. The licensing delays and inefficiencies inherent in lottery selection procedures frustrate the Commission's mandate to encourage the provision of new technologies and services to the public, as set forth in Section 7 of the Act.

34/ See Reply Comments of Fleet Call, Inc. in PR Docket No. 89-552, filed March 23, 1992 at pp. 4-5.

Thus, a true evaluation of the success of the 220 MHz initiatives must await licensee selection and eventual compliance with the construction and operational benchmarks.

Using auctions to select among competing applicants for communications authorizations has been debated for more than a decade and Fleet Call will not repeat those arguments here. Auctions are not a panacea to every licensing problem; they do, however, provide a simple, easy to administer process for preventing speculation and assuring that those who are truly interested in operating communications systems are most likely to obtain scarce licenses. Successful competitive bidders will demonstrate a commitment to implementing advanced digital services that is absent among lottery winners. They will also be compensating the public for the privilege of using a scarce public resource.

D. The Commission Should Require Innovator Block Licensees to Build Highly-Efficient Digital Systems

The Petition proposes that licensees be required to employ digital technology at least six times more efficient than traditional analog, trunked SMR systems but otherwise be free to develop innovative systems best-suited to market conditions.35/ Some commentors argue that the Commission should not mandate any technical requirements or technology-specific standards. Others recognize the value of limiting grants of proposed innovator blocks and associated regulatory relief to licensees that agree to employ

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35/ Petition at p. 6, n. 9 and p. 19.